

# Verrill Dana<sub>LLP</sub>

Attorneys at Law

WILLIAM H. STILES  
PARTNER  
wstiles@verrilldana.com  
Direct: 207-253-4966

ONE PORTLAND SQUARE  
PORTLAND, MAINE 04112-0586  
207-774-4000 • FAX 207-774-7499  
www.verrilldana.com

March 13, 2006

***By Hand Delivery and Email***

Board of Directors  
Dirigo Health Agency  
Attn: Lynn C. Theberge  
211 Water Street  
Augusta, ME 04333

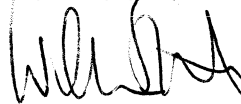
**Re: Maine State Chamber of Commerce Witness and Document Designation**

Dear Ms. Theberge:

Enclosed for filing please find two hard copies of the Maine State Chamber of Commerce's Identification of Alternative Methodology and Supporting Data and two hard copies of the Chamber's Opposition to Dirigo Health Agency's Motion to Continue Hearing and to Suspend Filing Deadlines.

Thank you for your attention to this matter.

Very truly yours,



William H. Stiles

WHS/rdl  
Enclosures

cc: Kelly Turner, AAG (***By Hand Delivery and Email***)  
William H. Laubenstein, III, AAG (***By Hand Delivery and Email***)  
James Smith, Esq., Hearing Officer (***By Hand Delivery and Email***)  
Joe Ditré, Esq. (***By Hand Delivery and Email***)  
Christopher T. Roach, Esq. (***By Email and U.S. Mail***)  
D. Michael Frink, Esq. (***By Email and U.S. Mail***)  
Bruce C. Gerrity, Esq. (***By Email and U.S. Mail***)  
Roy T. Pierce, Esq. (***By Email and U.S. Mail***)  
Kristine Ossenfort, Esq. (***By Email and U.S. Mail***)

STATE OF MAINE  
DIRIGO HEALTH AGENCY

IN RE:

DETERMINATION OF AGGREGATE  
MEASURABLE COST SAVINGS FOR  
THE SECOND ASSESSMENT YEAR  
(2007)

**MAINE STATE CHAMBER OF  
COMMERCE IDENTIFICATION  
OF ALTERNATIVE  
METHODOLOGY AND  
SUPPORTING DATA**

Pursuant to Procedural Order No. 3 dated February 22, 2006, Intervenor Maine State Chamber of Commerce (the “Chamber”), by and through its attorneys, hereby submits this Identification of Alternative Methodology and Supporting Data.

**I. OBJECTION TO PROCEDURES FOR THE ADJUDICATORY HEARING**

In the first instance, the procedures for this adjudicatory proceeding, as set forth in Procedural Order No. 3, violate due process of law for the reasons set forth in section III of the Chamber’s Application to Intervene and Objection to Provisions in the Notice and Draft Procedural Order, which the Chamber hereby incorporates by reference.

The Dirigo Health Agency (“DHA”) has not yet revealed its proposed methodology for determining aggregate measurable cost savings for the second assessment year, has not yet disclosed any documentation supporting its methodology (collectively, the “DHA Methodologies”), and has not yet provided access to public records pursuant to the various parties’ Freedom of Access Act (“FOAA”) requests. What is more, the DHA Board of Directors (the “Board”) denied the Chamber’s motion to provide for discovery during this proceeding. See Order on Intervention and Response to Objections to Procedural Order No. 1, dated February 17,

2006. Nevertheless, pursuant to the procedures for this adjudicatory proceeding, the Chamber and other interested parties are expected to identify an alternative methodology, “including the components to be included in aggregate measurable cost savings, the party intends to present; and credible, reliable and accurate data that supports the amount of aggregate measurable cost savings derived from the methodology” --all without the benefit of first reviewing the proposed DHA Methodologies for calculating savings. Furthermore, both the DHA and the Consumers for Affordable Health Care (“CAHC”) declined to comply with the Procedural Order No. 2 March 10, 2006 deadline for listing witnesses (and providing summaries of testimony), identifying experts (including Rule 26 disclosures), and documentation. This does not comport with the fair process requirements for an adjudicatory hearing conducted in accordance with the Maine Administrative Procedures Act.

Because DHA has not yet revealed its proposed DHA Methodologies, and has not yet provided access to public records pursuant to the various parties’ FOAA requests, the Chamber can only preliminarily describe any alternative methodology and the supporting data. As a result, the Chamber reserves the right to revise its methodology or adopt new methodologies once the DHA reveals and explains the DHA Methodologies, and discloses all relevant documentation. Subject to and without waiving said objections, the Chamber provides the following:

## **II. ALTERNATIVE METHODOLOGY**

### **A. Description of Methodology, Including Components to be Included in Aggregate Measurable Cost Savings.**

The Chamber’s position is simple: the only methodology permitted by the plain language of 24-A M.R.S.A. § 6913 is one that interprets “aggregate measurable cost savings” to mean savings that are:

- reductions to bad debt and charity care costs
- as a result of (1) the operation of Dirigo Health and (2) an expansion in MaineCare eligibility occurring after June 30, 2004

The Chamber contends that a measurement of the reduction in bad debt and charity care costs (as described above) is the only measurement properly before the DHA Board at this hearing. All other cost savings are beyond the scope of the Section 6913.

Although the DHA has not yet produced the DHA Methodology, the Chamber assumes for the purposes of this filing that the DHA will propose a methodology similar to the uninsured and underinsured initiatives at issue before the Superintendent of Insurance. The Chamber offers the following refinements to the uninsured and underinsured initiatives (as testified to by Mr. Sheils before the Superintendent):

1. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must employ a “cost basis” rather than a “charge basis” approach;
2. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must correlate only to the applicable fiscal year (July 1, 2005 through June 30, 2006);
3. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must be reflective of actual changes in reported uncompensated care data;
4. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must account for the fact that only approximately 40% of reduced bad debts and charity care recognized by providers is passed back to payers;
5. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must account for the fact that approximately 50% of the Maine market is insured

under MaineCare and Medicare, and that Medicaid utilization (with its lower payment rates) has increased dramatically since 2002 creating additional cost shifting;

6. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must account for the fact that approximately 31% of all uncompensated care is attributed to people with incomes in excess of 300% of the federal poverty level;

7. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must account for continuing bad debt owing to deductibles for previously underinsured people now covered by Dirigo Choice;

8. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must not employ Mercer's unexplained 30% factor that increased to savings; and

9. Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care must not include the so-called "woodwork effect," as reductions in bad debt and charity care related to Medicaid may only be related to expansions in eligibility after June 30, 2004, and reductions related to private insurance is not related to the operation of Dirigo Health.

Because the DHA Methodology has not yet been disclosed, and the DHA declined to comply with the March 10, 2006 deadline specified in Procedural Order No. 3, the Chamber reserves the right to revise its alternative methodology and to identify refinements or objections to any methodology proposed by the DHA or any other party.

**B. Description of Credible, Reliable and Accurate Data Supporting the Chamber's Alternative Methodology.**


The Chamber identifies information including: (1) Up-to-date Dirigo Health enrollment data (including the number of previously insured and uninsured members) on a month-by-month basis, (2) Up-to-date disenrollment data (including the number of previously insured and

uninsured members) on a month-by-month basis, (3) all reports required by the Dirigo Health Act, 24-A M.R.S.A. § 6901 *et seq.*, or any related legislation, including the data underlying said reports; (4) hospital and physician data on uncompensated care (required to be collected by DHA); (5) data, reports, exhibits and calculations identified in Mr. John Shiels testimony before the Superintendent; (6) all documents responsive to a freedom of access request filed by any party; (7) all documents contained in the Administrative Record for the hearing before the Superintendent of Insurance in the first assessment year; (8) all discovery responses by any party in the hearing before the Superintendent of Insurance in the first assessment year. All documents identified above are presently in the possession of the DHA.

Because the DHA Methodology has not yet been disclosed, and the DHA and the CAHC declined to comply with the March 10, 2006 deadline specified in Procedural Order No. 3, the Chamber reserves the right to identify other data and documents, including the right to identify data and documents related to any methodology proposed by the DHA or any other party.

Dated: March 13, 2006

Respectfully submitted,



---

William H. Stiles  
Brett D. Witham  
Counsel for the Maine State Chamber  
of Commerce

VERRILL DANA, LLP  
P.O. Box 586  
One Portland Square  
Portland, Maine 04112-0586  
William H. Stiles Direct: (207) 253-4658  
Email: [wstiles@verrilldana.com](mailto:wstiles@verrilldana.com)  
cc: [rlefay@verrilldana.com](mailto:rlefay@verrilldana.com)  
Phone: (207) 774-4000  
Fax: (207) 774-7499

## **CERTIFICATE OF SERVICE**

I, William H. Stiles, attorney for the Maine State Chamber of Commerce, hereby certify that on this day the foregoing document was served on the following parties via hand-delivery and electronic mail:

**Board of Directors, Dirigo Health Agency**

Attn: Lynn Theberge  
Dirigo Health Agency  
211 Water Street  
53 State House Station  
Augusta, Maine 04333-0053  
[lynn.c.theberge@maine.gov](mailto:lynn.c.theberge@maine.gov)

**Counsel for Dirigo Health Agency**

Kelly Turner, AAG  
Assistant Attorney General  
Department of Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
[Kelly.Turner@maine.gov](mailto:Kelly.Turner@maine.gov)

**Counsel for Dirigo Health Board**

William H. Laubenstein, III, Esq.  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006  
[bill.laubenstein@maine.gov](mailto:bill.laubenstein@maine.gov)

**Counsel for Anthem Health Plans of Maine, Inc.**

Christopher T. Roach, Esq.  
Pierce Atwood, LLP  
One Monument Square  
Portland, ME 04101  
[croach@pierceatwood.com](mailto:croach@pierceatwood.com)

**Counsel for Consumers for Affordable Health Care**

Joe Ditré, Esq.  
Executive Director  
Consumers for Affordable Health Care  
PO Box 2490  
Augusta, ME 04338-2490  
[jditre@mainecahc.org](mailto:jditre@mainecahc.org)

**Counsel for Maine Association of Health Plans**

D. Michael Frink, Esq.  
Curtis, Thaxter, Stevens, Broder & Micoeau, LLC  
One Canal Plaza  
P.O. Box 7320  
Portland, ME 04112-7320  
[dfrink@curtisthaxter.com](mailto:dfrink@curtisthaxter.com)

**Counsel for Maine Automobile Dealers Assoc.  
Insurance Trust and Bankers Health Trust**

Bruce C. Gerrity, Esq.  
Roy T. Pierce, Esq.  
Preti Flaherty Beliveau Pachios & Haley, LLP  
45 Memorial Circle  
PO Box 1058  
Augusta, Maine 04332-1058  
[rpierce@preti.com](mailto:rpierce@preti.com)

**Maine State Chamber of Commerce**

Kristine Ossenfort, Esq.  
Senior Governmental Affairs Specialist  
Maine State Chamber of Commerce  
7 University Drive  
Augusta, Maine 04330  
[Kossenfort@mainechamber.org](mailto:Kossenfort@mainechamber.org)

**Hearing Officer**

Attn: James Smith, Hearing Officer  
Dirigo Health Agency  
211 Water Street  
53 State House Station  
Augusta, Maine 04330-0053  
[jsmmsmith@aol.com](mailto:jsmmsmith@aol.com)